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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,238	06/09/2005	Matthew L Murdock	MURD-10744	8727
23123	7590	06/12/2006		
SCHMEISER OLSEN & WATTS 18 E UNIVERSITY DRIVE SUITE # 101 MESA, AZ 85201			EXAMINER BROWN, MICHAEL A	
			ART UNIT 3764	PAPER NUMBER

DATE MAILED: 06/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/538,238	MURDOCK ET AL.	
	Examiner	Art Unit	
	Michael Brown	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 6-8 and 15-16 are rejected under 35 U.S.C. 102(b) as being anticipated by York.

York discloses in figures 1-7 a massage tool comprising a body 1 including a handle portion 3, a head portion 2, the body includes an interior surface forming a socket 20, in the body and a plurality of spherical elements 10, that have a variety of physical characteristic (round, curved, has a center axis).

As for claims 6-7, York discloses a massage tool comprising a body 1, including a handle portion 3, a head portion 2, an interior surface forming a socket 20, having a front side and a back side, a first portion of the interior forming a first opening (the top opening in fig. 5), a second portion of the interior surface forming a second opening (at 21), at the back side, at least one spherical portion 10, formed in the socket, wherein the second opening 21, is smaller than the first opening (fig. 5) and a snap ring 30, in the first portion (fig. 5).

As for claim 8, York discloses in figures 1-7 a massage tool comprising a handle 3, a head 2, supported on the handle, a socket 20 and a retaining mechanism (a retaining ring 30 fits into an annular groove 24).

As for claims 15-16 York discloses in figures 1-7 a method of delivering a massage comprising selecting one spherical element 10, of a plurality of spherical elements 10, removably placing the one spherical element in a socket 20, rollably engaging a subject body with the one spherical element and selecting a plurality of spherical elements having a variety of physical characteristic.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-5 and 17-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over York in view of Wong.

York discloses in figures 1-7 a massage tool, substantially as claimed. However, York doesn't disclose the spherical elements being glass, a precious stone or being a variety of sizes. Wong teaches in figures 1-5 a massing tool comprising spherical elements (28, 29) that can be formed of glass, semi-precious stone or a variety of sizes (28 and 29 are different sizes). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the spherical elements disclosed

Art Unit: 3764

by York could be fabricated of glass, semi precious stones or different sizes as taught by Wong. Making the spherical elements of different types of material and various sizes would allow the user to incur different degrees of massaging on his/her body. The method steps recited in claims 17-24 don't involve an inventive step because each step recited is within the scope of the prior art.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pearson, Proben and Cross, each discloses a massaging tool.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gergory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M. Brown
June 5, 2006

A handwritten signature in black ink, reading "Michael A. Brown". The signature is fluid and cursive, with the first name "Michael" being the most prominent part.

MICHAEL A. BROWN
PRIMARY EXAMINER